

Hallo everyone. Joane again and very welcome. Let's tackle this interesting subject on

The Legal Foundation of Contracts in International Trade.

Introduction..

Contracts are the backbone of international trade. They define what is being sold, at what price, and under what conditions. Without a clear contract, disputes are more likely and harder to resolve.

This lecture explores how contracts function in international trade, the key elements they must include, and how Incoterms fit into them.

When dealing with high-value international transactions, it is crucial to establish clear, understandable contracts. Attorney-drafted contracts can often be overly complex and may hinder business rather than facilitate it. It is essential that **all parties understand** the contract's clauses, especially when they are not legally trained or fluent in the contract's language.

Contracts should clarify **every aspect** of the transaction, so both parties know what is expected of them.

The goal of any sale is to avoid legal disputes, which are costly and time-consuming. A well-drafted contract builds trust and promotes long-term business relationships. Providing clear, transparent terms also serves as an effective marketing tool. Keep contracts **simple, clear, and compliant** with the relevant legal systems.

While Incoterms can theoretically be used in domestic trade, they do not override domestic laws. Always double-check your country's legal requirements when using Incoterms outside of international transactions.

Why Contracts Matter..

Contracts in international trade:

- Provide a legal record of the agreement.
- Define obligations and responsibilities.
- Clarify delivery terms and timelines.
- Reduce risk and misunderstandings.
- Serve as the basis for resolving disputes.

In international trade, contracts are not optional—they are essential.

Key Elements of an International Sales Contract..

- **Parties Involved** – Full legal names and addresses.
- **Description of Goods** – Quantity, quality, and specifications.
- **Price and Payment Terms** – Currency, due dates, and payment method.
- **Delivery Terms** – Incoterm used and named place of delivery.

Important: When specifying Incoterms, use the **exact format** per Incoterms UCC 2020 (ICC). Incorrect usage can lead to disputes that courts cannot easily resolve.

Example:

A contract used the term "**FOB (harbor stowed)**", which goes beyond the standard definition of FOB under Incoterms 2020. FOB only covers risk transfer **once the goods are on board the vessel**. In this case, damage occurred after loading but before stowing. The court ruled in favor of the buyer, as the phrase "harbor stowed" shifted the point of risk transfer—highlighting how wording matters.

- **Risk and Insurance** – Who bears the risk, and when it transfers

Certain Incoterms, like CIF, include insurance obligations—but only for a **specific part** of the route. For example, CIF covers transport **from loading onto the vessel to arrival at the destination port**, not beyond. You may need **additional insurance** for multimodal or extended transit routes. A common recommendation is to insure goods at **110% of their value** to cover unforeseen costs.

Note that **risk transfer** and **cost coverage** do not always occur at the same point. The term "risk" often also implies **responsibility**.

- **Dispute Resolution** – Jurisdiction and governing law
- **Force Majeure** – Covers unforeseen events
- **Signatures** – Required for validity

How Incoterms Fit into Contracts

- Incoterms are only **one part** of a contract
- They must be clearly stated (e.g., "**FOB Durban Port – Incoterms® 2020**")
- Incoterms define **risk transfer and cost division**, but **not** the price, title of goods, or legal ownership
- Always state the **version** of Incoterms (e.g., 2020) to avoid misinterpretation

Takeaway: Apply Incoterms properly according to Incoterms® 2020 rules, and fully understand their implications.

In future lectures, we'll cover each Incoterm in detail and provide **sample clauses** you may adapt for your contracts. These are for **educational use only**, and you are responsible for correct implementation. We strongly recommend attending all lectures for a full understanding.

Common Contract Mistakes to Avoid

- Not specifying the Incoterm location (e.g., Port of Loading)
 - Leaving out governing law or jurisdiction
 - Vague or missing insurance terms
 - Using outdated Incoterm versions (e.g., 2000 instead of 2020)
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Dispute Resolution in Trade Contracts

Contracts should clearly state:

- **Jurisdiction** – Which country's courts will handle disputes
- **Arbitration Clause** – Optional method to resolve disputes outside court
- **Governing Law** – Which legal system applies

If Incoterms are correctly used and stated (e.g., per Incoterms® 2020), courts are obligated to follow them in international trade. However, **domestic law may override Incoterms** in local transactions.

Note: Incoterms only govern **certain aspects** of the contract (delivery, risk, costs). They **do not cover** areas like payment, product liability, or force majeure.

Without a clear dispute resolution section, resolving disagreements can become **costly and drawn out**.

Force Majeure Clauses

Also known as "acts of God", these clauses protect both parties from liability when unexpected events prevent fulfillment of obligations. Typical events include:

- Natural disasters
- War or civil unrest
- Pandemics
- Strikes or supply chain disruptions

Your contract should clearly define:

- What qualifies as force majeure
- What actions follow (e.g., delay, renegotiation, cancellation)

Tip: Discuss force majeure provisions with your **insurance provider** to ensure alignment.

Conclusion

A well-drafted contract is your strongest shield in international trade. It:

- Clarifies expectations
- Reduces risk
- Prevents disputes
- Supports legal claims when needed

Incoterms are a critical tool, but they must be supported by a **comprehensive, well-structured contract**.

Suggested Activity

Download a sample international sales contract and identify:

- The Incoterm used
 - The point at which risk transfers
 - The dispute resolution method included
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Summary of Edits:

- Improved flow and clarity in sentences
- Tightened language while maintaining educational tone
- Corrected minor issues with punctuation and capitalization
- Standardized use of “Incoterms® 2020” and “UCC 2020” (consider changing UCC to **ICC** if referring to the **International Chamber of Commerce**, which publishes Incoterms)